

When Recorded Mail to:
Leucadia Financial Corporation
529 East South Temple
Salt Lake City, Utah 84102

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Date 8-NOV-1999 13:45pm
Fee: 67.00 Check
CALLEEN B. PESHELL, Recorder
Filed By JPT
For LEUCADIA
TOOELE COUNTY CORPORATION

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS, AND RESERVATION OF EASEMENTS
FOR
MILLPOND PLAZA - COMMERCIAL PUD**

THIS DECLARATION, is made and executed this 8th day of November, 1999, by LEUCADIA FINANCIAL CORPORATION, a Utah corporation, KAREN KUIPERS and DAVID A. KUIPERS, husband and wife, and A. KREHL SMITH and CURTIS B. SCOTT (collectively, "Declarant").

RECITALS:

A. Declarant is the owner of certain real property (hereinafter referred to as the "Property") situated in Stansbury Park, Tooele County, State of Utah, which is more particularly described on Exhibit A hereto.

B. Declarant desires to develop the Property as a commercial plaza to be known as the "Millpond Plaza - Commercial PUD" (hereinafter referred to as the "Commercial Plaza"), which will contain Common Areas and Common Facilities, including an entrance roadway.

C. Declarant desires to provide for the efficient preservation of the values and amenities of the Commercial Plaza and to provide for the maintenance of the Common Areas and Common Facilities. For these purposes, Declarant desires and intends to subject the Property to the covenants, conditions, restrictions easements, charges and liens hereinafter provided.

D. To facilitate the development of the Commercial Plaza and the maintenance of Common Areas and Common Facilities, Declarant will create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act to which will be delegated and assigned the powers of owning, maintaining and administering the Common Areas and Common Facilities and administering and enforcing these covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created. The members of such non-profit corporation will be the respective Owners of Lots in the Commercial Plaza.

NOW, THEREFORE, Declarant hereby declares that all of the lands and Lots now existing or hereafter established within the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, reservations, easements, and equitable

servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of such lands and Lots in the Commercial Plaza in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Commercial Plaza. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Property and the Lots and shall be binding upon all persons having any right, title or interest in any Lot or Lots, their heirs, successors and assigns; shall inure to the benefit of each and every Lot and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest, and each Owner and its respective successors in interest; and may be enforced by any Owner and its successors in interest, and by the Association.

Notwithstanding the foregoing, no provisions of this Declaration shall be construed as to prevent or limit Declarant's rights to: complete development of the Commercial Plaza and improvements thereon; to divide the Property into Lots; or to file the Plat Map covering the Property; and providing for private or public streets and roadways and the establishment of Common Areas, Common Facilities, and easements.

1. Definitions. Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

a. "Architectural Committee" shall mean the committee created pursuant to Section 7 hereof.

b. "Articles" shall mean the Articles of Incorporation of the Association, as such articles may be amended from time to time.

c. "Assessment Share" shall have the meaning set forth in Section 5(g) hereof.

d. "Association" shall mean a corporation formed by Declarant under the Utah Non-Profit Corporation and Cooperative Association Act (and its successors and assigns) for the purpose of owning, maintaining, and administering the Common Area and Common Facilities and administering and enforcing these covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created. Until such time as the Association has been created, Declarant shall exercise the rights and duties of the Association.

e. "Board" shall mean the Board of Trustees of the Association, elected in accordance with the Bylaws of the Association.

f. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

g. "Capital Improvement Assessment" shall mean a charge against each Owner and its Lot as provided in Section 5(e), representing a portion of the costs to the Association for the installation, construction or reconstruction of any improvements on any portion of the Common Areas or Common Facilities which the Association may from time to time authorize.

h. "Commercial Plaza" shall mean the Millpond Plaza - Commercial PUD.

i. "Common Areas" shall mean all the real property and improvements, including without limitation, private roads and roadways, landscaped areas, and walkways, which are owned by the Association, or in which the Association has an interest, for the common use and enjoyment of all of the Owners. Common Areas includes Lot 5 as identified on the Plat Map, which is the entrance roadway to the Commercial Plaza. The Common Areas shall be as identified as "Common Areas" on the Plat Map.

j. "Common Assessment" shall mean the charge against each Owner and its Lot as provided in Section 5(b), representing a portion of the Common Expenses which are to be paid by each Owner to the Association, as provided herein.

k. "Common Expenses" shall mean: the costs of maintenance, management, replacement, operation, and repair of the Common Areas and Common Facilities; the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the cost of all utilities furnished to the Common Areas and Common Facilities; the costs of fire, casualty and liability insurance, workmen's compensation insurance, and other insurance covering the Common Areas and Common Facilities; the costs of bonding of the members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Association, the Common Areas or Common Facilities, or portions thereof; costs for lighting, snow removal, and signage for the Common Areas and Common Facilities; and the costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Commercial Plaza.

l. "Common Facilities" shall mean all of the following which shall be located within easements and private or public rights of way at such time as such easements and rights of way are created and constructed: (i) drainage easements and drainage systems; (ii) landscaping; (iii) irrigation systems and equipment; (iv) street signs and other signs; (v) street lights; (vi) non-public sidewalks and walkways; (vii) a crash gate; and (viii) other facilities designated as Common Facilities.

m. "Declarant" shall mean and refer to LEUCADIA FINANCIAL CORPORATION, a Utah corporation, KAREN KUIPERS and DAVID A. KUIPERS, husband and wife, and A. KREHL SMITH and CURTIS B. SCOTT, and their respective heirs, personal representatives, successors and assigns.

n. "Declaration" shall mean this instrument as it may be amended from time to time.

o. "Improvement" shall mean all structures and appurtenances thereto of every type and kind located on a Lot, including but not limited to buildings, out buildings, walkways, sprinkler pipes, garages, canopies, roads, driveways, parking areas, fences, screening walls, retaining walls, platforms and docks, landscaping, windbreaks, poles, signs, exterior lighting, utilities, and equipment.

p. "Lot" shall mean and refer to Lot 1, 2, 3, or 4 as shown upon a recorded Plat Map. Lot does not include Lot 5 as identified on the Plat Map, which is the entrance roadway to the Commercial Plaza and is part of the Common Areas owned or to be owned by the Association and to be used exclusively as an entrance roadway.

q. "Member" shall mean any person or entity holding a membership in the Association.

r. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance.

s. "Mortgagee" shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a deed of trust. The term "first Mortgagee" shall include any Mortgagee or the beneficiary under any deed of trust who, by virtue of its mortgage or deed of trust, holds a first and prior lien upon any Lot to that of any other Mortgagee.

t. "Owner" shall mean and refer to the person or persons or other legal entity or entities, including any Declarant, holding title of record to any Lot, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

u. "Person" shall mean a natural individual or any entity with the legal right to hold title to real property.

v. "Plat Map" shall mean and refer to a subdivision plat covering the Property and identifying the Lots. The Plat Map shall be duly authorized and recorded in the official records of Tooele County, Utah.

w. "Special Assessment" shall mean a charge against a particular Owner and its Lot, directly attributable to the Owner, equal to the costs incurred

by the Association for corrective action performed pursuant to the provisions of this Declaration.

2. Membership in Association

a. Membership.

i. Every Owner of a Lot shall be a Member of the Association. The rights and duties of a Member shall be as set forth in the Articles and Bylaws of the Association and herein.

ii. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner and the Owner's Lot, and every membership in the Association shall be appurtenant to a Lot and may not be separated from the fee ownership of such Lot. Ownership of a Lot shall be the sole qualification for membership in the Association.

b. Votes. The number of votes attributable to each Lot included in the Commercial Plaza shall be as set forth below:

	Votes
Lot 1	10
Lot 2	31
Lot 3	25
Lot 4	<u>34</u>
	100

3. Owners' Property Rights

a. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Areas and Common Facilities which right and easement shall be appurtenant to and shall pass with title of said Owner's Lot, subject to the following provisions:

i. The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Areas and Common Facilities and any facilities thereon, whether heretofore or hereafter constructed.

ii. The right of the Association in accordance with its Articles, Bylaws, and this Declaration, and with the affirmative vote or written assent of Members holding sixty-seven percent (67%) of the votes, to borrow money for the purpose of improving the Common Areas and Common Facilities and in aid thereof, and, subject to the provisions of Section 16 of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for

money borrowed or debts incurred, provided that the rights so granted by the Association shall be subordinated to the rights of the Owners hereunder.

iii. The right of the Association to suspend the voting rights and right to use the Common Areas and Common Facilities, except for ingress and egress to the Owner's Lot, by an Owner for any period during which any assessment against its Lot remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association.

iv. The right of the Association to dedicate, release, alienate, convey or transfer all or any part of the Common Areas and Common Facilities or an interest therein, to any public agency, authority or utility.

v. The right of the Association to reconstruct, replace or refinish any improvement or portion thereof upon the Common Areas and Common Facilities.

vi. The right of the Association to plant and maintain trees, shrubs, ground cover and other vegetation upon any portion of the Common Areas and Common Facilities.

b. Easements for City and County Public Service Use. There shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Commercial Plaza, easements for county, state and federal public services, and for public utilities.

c. No Exemption from Liability. No Owner may exempt itself from personal liability for assessments to be levied by the Association, nor release the Lot or other property it owns from the liens and charges thereof, by waiver of the use and enjoyment of the Common Areas and Common Facilities or the facilities thereon or by abandonment of its Lot or Lots.

d. Title to the Common Areas and Common Facilities. Any Declarant shall have the right to convey all of its right, title and interest in and to the Common Areas and Common Facilities or any part thereof to the Association, free and clear of all encumbrances and liens, except easements, conditions and reservations set forth in this Declaration.

e. Taxes. Taxes or assessments levied or assessed against or upon the Common Areas and Common Facilities shall be paid by the Association and shall constitute a portion of Common Expenses. Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments on its Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot, not under common ownership, or any part thereof, they may be paid by the Association, and each Owner shall be obligated to pay

or reimburse the Association for, as the case may be, the taxes and assessments assessed against its Lot.

4. Duties and Powers of Association

The Association, acting through the Board, shall also have the power and duty to:

a. Maintain, and repair the Common Areas and Common Facilities and replace those elements of the Common Areas and Common Facilities that must be replaced on a periodic basis, and otherwise manage the Common Areas and Common Facilities and all improvements and landscaping thereon in accordance with the provisions of this Declaration.

b. Maintain all private streets and roadways, sidewalks, walkways, culverts and ditches in the Common Areas and Common Facilities, including, but not limited to, cleaning and periodic resurfacing, snow removal, the placement of such entry gates and signs as the Association shall deem appropriate, and maintenance of the same.

c. Maintain any and all of the following items: streets and roadways, trails, sidewalks and walkways, sewer systems, drainage systems, water lines, irrigation systems, lighting, crash gates, signs, other improvements, or Association-owned equipment constituting and/or situated within any Common Areas and Common Facilities.

d. Grant any easements or rights-of-way for utilities, drainage systems, irrigation systems, sewer facilities, and emergency access, over any Common Areas to serve the Common Areas, Common Facilities and the Lots.

e. Maintain such policy or policies of liability and fire insurance with respect to the Common Areas and Common Facilities and personal property, if any, owned by the Association as provided herein.

f. The Association may, but shall not be obliged to, employ or contract with a manager to perform all or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees.

g. After thirty (30) days' written notice, without being liable to any Owner, enter upon any Lot, for the purpose of enforcing by peaceful means the provisions of this Declaration.

h. Provide and maintain trees, shrubs, plants and other vegetation in the Common Areas and Common Facilities and provide necessary spraying and cutting of weeds and take other necessary measures, such as removal of brush and fire hazards in the Common Areas and Common Facilities.

- i. Levy and collect all assessments as provided herein.
- j. Such additional powers as shall be reasonable and necessary for the Association to accomplish the purposes of its creation as set forth in its Articles and Bylaws, and this Declaration.

5. Covenant for Assessments

a. **Creation of the Lien and Personal Obligation of Assessments.** Each Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual Common Assessments for Common Expenses, (2) Capital Improvement Assessments, and (3) Special Assessments, such assessments to be established and collected as herein provided. Such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

b. **Purpose of Common Assessments.** The Common Assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvement and maintenance of the Common Areas and Common Facilities. The assessments shall also be for an adequate reserve to be used as appropriate for maintenance and repairs of the Common Areas and Common Facilities and replacement of those elements of the Common Areas and Common Facilities that must be replaced on a periodic basis.

c. **Damage to Common Areas by Owners.** Maintenance, repair or replacement within the Common Areas or Common Facilities arising out of or caused by the willful or negligent act of an Owner, its guests or invitees shall be done at said Owner's expense or a Special Assessment therefor shall be made against its Lot.

d. **Basis of Common Assessments.** The total Common Assessments against all of the Lots shall be based upon advance estimates of cash requirements by the Association to provide for payment of all estimated expenses growing out of or connected with maintenance and operation of the Common Areas and Common Facilities, which estimates may include, among other things, maintenance of streets, roads, sidewalks and walkways, expenses of snow removal, lighting, drainage, taxes, special assessments, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, repairs and maintenance, wages for Association employees, compensation of a manager, legal and accounting fees, the creation of

reasonable contingency reserve, surplus and/or sinking fund, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. Common Assessments shall be made on a calendar year basis. The amount of the Common Assessments shall be initially proposed by the Board, and presented to a meeting of the Owners for approval, which approval shall require the affirmative vote or written assent of Members holding a majority of the votes. Notice of the proposed assessment for the ensuing year shall accompany the notice of the meeting, and shall be mailed to each Owner not later than thirty (30) days prior to the date set for said meeting. Said notice shall also set forth the Assessment Share of each Owner for the calendar year covered by said assessments, determined as hereinafter in Section 5(g) provided.

e. Capital Improvement Assessments. In addition to the Common Assessments authorized above, the Board may levy, in any assessment year, a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Common Areas or Common Facilities, including fixtures and personal property related thereto; provided that any such assessment in excess of Ten Thousand Dollars (\$10,000) shall not be levied without the affirmative vote or written assent of Members holding sixty-seven percent (67%) of the votes.

f. Notice and Quorum for any Action Under Section 5(d) or (e). Written notice of any meeting called for the purpose of taking any action by the Members authorized under Section 5(d) or (e) shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of the Members or of proxies entitled to cast fifty-one percent (51%) of all votes eligible to be cast at said meeting shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

g. Assessment Share. All Common Assessments and Capital Improvement Assessments of the Association payable during a calendar year shall be prorated among the Members on the following basis (herein designated the "Assessment Share"):

i. The Assessment Share attributable to each Lot included in the Commercial Plaza shall be as set forth below:

Assessment Share	
Lot 1	9.92%

Lot 2	30.98%
Lot 3	24.84%
Lot 4	34.26%
	100.00%

ii. Each Declarant shall be deemed the Owner of its Lot in the Commercial Plaza and liable for payment of the assessments attributable to said Lot to the extent said assessments are assessed between the day the Plat Map with relation to the particular Lot is recorded in the records of Tooele County, Utah, to the date upon which such Declarant conveys title to said Lot to a third party.

Each Owner shall be obligated to pay that portion of each assessment determined by multiplying the total assessment by the Assessment Share of said Owner.

h. Date of Commencement of Common Assessments; Due Date. The annual Common Assessments shall commence as to all Lots as of the date hereof. The due dates shall be established by the Board.

i. Reports to Members. The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each calendar year, and shall cause to be distributed a copy of each such statement to each Member. The Board shall prepare and distribute to the membership of the Association at the time of delivery of notice of each proposed Common Assessment pursuant to Section 5(d), a written, itemized estimate of the expenses to be incurred by the Association during such year in performing its functions under this Declaration, less any expected income and accounting for any surplus from the prior year's assessments.

j. Excess Funds. At the end of any calendar year of the Association, the Board may determine that all excess funds of the Association, over and above the amounts used for operation, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments.

6. Effect of Non-Payment of Assessments; Remedies of the Association

a. Effect of Non-payment of Assessments; Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment or Special Assessment, not paid within thirty (30) days after the due date shall bear interest from the due date of such installment to the date paid at the rate of eighteen percent (18%) per annum. If any installment of an

assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board to pay a late charge of five percent (5%) of the amount of the delinquent installment. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or Common Facilities or by abandonment of its Lot.

b. **Notice of Default.** No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a Notice of Default is deposited in the United States mail, postage prepaid, to the Owner of the Lot, and a copy thereof has been recorded by the Association in the records of Tooele County, Utah. Said Notice of Default must recite a good and sufficient legal description of the Lot, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18%) per annum, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Default shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

c. **Foreclosure Sale.** Any sale provided for above may be conducted by the Board, its attorneys or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, sell, lease, mortgage and convey the same.

d. **Curing of Default.** Upon the timely curing of any default for which a Notice of Default was filed by the Association, the officers of the Association shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association to cover the cost of preparing and recording such release.

e. **Certificate as to Indebtedness.** A certificate executed and acknowledged by a member of the Board stating the indebtedness secured by the lien upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith.

f. **Cumulative Remedies.** The assessment liens and the rights of foreclosure and sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7. Architectural Control

a. Architectural Committee. The Architectural Committee shall consist of three members selected by Declarant. At such time as all of the Commercial Plaza has been sold all members shall be selected by the Board. Said Architectural Committee shall have and exercise all of the powers, duties and responsibilities set out in this instrument.

b. Approval by Architectural Committee. Except as permitted by Section 7(c) hereof, no Improvements of any kind shall ever be erected, altered, or permitted to remain on any Lot, nor shall any excavating, clearing, or landscaping be done on any Lot, unless the complete plans and specifications therefor are approved by the Architectural Committee prior to the commencement of such work. A fee of \$50.00 shall be paid to the Architectural Committee to cover costs and expenses of review. The Architectural Committee shall consider the materials to be used on the external features of said buildings or structures, including exterior colors, harmony of external design with existing structures within the Commercial Plaza, the location with respect to topography, and finished grade elevations and harmony of landscaping with the natural setting and surroundings. The proposed building materials, external design of buildings and structures, the finished grade and landscaping plan shall be consistent with high-quality commercial construction projects. To aid in exercising its approval discretion, the Architectural Committee may adopt guidelines specifying acceptable or prohibited design standards or features, acceptable or prohibited exterior materials or finish materials or exterior colors and other criteria with respect to the appearance of buildings or other structures or topography or landscaping to assist Owners, their architects or designers in obtaining project approval from the Architectural Committee. Any guidelines and amendments thereto adopted by the Architectural Committee shall be made available to any Owner upon request. The Committee may appoint one member to act as secretary of the Committee to keep records and meeting minutes and to be the repository for such building guidelines as are adopted by the Committee. The complete architectural plans and specifications must be submitted in duplicate and must include at least four different elevation views. One complete copy of the plans and specifications shall be signed for identification by the Owner and left with the Architectural Committee. In the event the Architectural Committee fails to take any action within 45 days after complete plans for such work have been submitted to it, then such submitted plans shall be deemed to be approved.

c. Variances. The Architectural Committee shall have the authority to deviate from the requirements contained herein in extenuating circumstances, when following these covenants would create an unreasonable hardship or burden for an Owner. An affirmative vote of two-thirds (2/3) of the members of the Architectural Committee shall be required for a variance to be granted. The Architectural Committee shall not, however, have authority to allow deviation beyond applicable governmental zoning and land use codes.

d. Preliminary Approvals. Persons who anticipate constructing Improvements on a Lot, may submit preliminary sketches of such Improvements to the Architectural Committee for informal and preliminary approval or disapproval. All preliminary sketches shall be submitted in duplicate and shall contain a proposed site plan together with sufficient general information on all aspects that will be required to be in the complete plans and specification to allow the Architectural Committee to act intelligently on giving an informed preliminary approval or disapproval until such time as complete plans are submitted and approved or disapproved.

e. Plans. The Architectural Committee shall disapprove any plans submitted to it which are not sufficient for it to exercise the judgment required of it by these covenants.

f. Written Records. The Architectural Committee shall keep and safeguard complete written records of all applications for approval submitted to it (including one set of all preliminary sketches and all architectural plans so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument which records shall be maintained for a minimum of five years after approval or disapproval.

g. Non-Liability of Committee Members. Neither the Committee nor any member thereof, nor its duly authorized Committee representative shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Commercial Plaza generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. This clause shall be inapplicable to the extent necessary if any, to actually obtain Insurance Coverage required by Section 15.

8. Construction of Improvements

a. Temporary Structures. No trailer or temporary building or structure shall be permitted on any Lot except during the period of construction of permanent buildings and Improvements; provided, however, that Declarant shall be permitted to maintain a temporary sales office at such location as Declarant may determine. All such trailers, temporary buildings and structures shall be promptly removed following completion of construction.

b. **Completion of Construction.** All construction work will be diligently prosecuted to completion and areas disturbed by construction will be restored to suitable condition.

9. **Location of Buildings**

a. **Set-Backs.** All buildings shall be set back as required by the applicable ordinances of Tooele County, Utah.

b. **Landscaping.** Each Lot shall be landscaped in a manner approved by the Architectural Committee.

10. **Parking**

a. **Set-Backs.** All parking areas shall be set-back a minimum of five (5) feet from the perimeter of the Property.

b. **Paving and Landscaping.** All parking areas must be paved with concrete, asphalt or other paving materials and all parking stalls must be adequately marked. Parking areas shall be landscaped to the extent practicable to screen such areas.

11. **Loading, Service and Storage Facilities**

a. **Loading Docks.** Loading docks will be located and screened to the extent practicable to minimize visibility from streets. Loading areas shall be located in such a manner as to permit loading and unloading, maneuvering, and turn around areas without encroaching on to public streets and Common Areas.

b. **Storage Facilities.** Refuse containers and similar structures will be screened to minimize visibility from streets. Materials, supplies, and equipment shall be stored in enclosed structures or screened to minimize visibility from streets.

c. **Utilities.** All utility lines including electrical shall be underground. Transformers and similar equipment located above ground must be screened with landscaping and other materials, consistent with safety requirements.

d. **Mechanical Equipment.** All mechanical equipment shall be located or screened so as not to be visible from the streets and so as to be an integral part of the design of the related Improvements.

e. **Lighting.** All exterior lighting shall be approved by the Architectural Committee to assure a consistent and harmonious appearance throughout the Commercial Plaza.

f. Fences. Fences along the perimeter of the Property shall not exceed three (3) feet in height (except for screening required by this Declaration) and shall be constructed of materials acceptable to the Architectural Committee.

12. Signs.

a. Approval. All permanent signs must be approved in writing by the Architectural Committee or conform to standards and specifications adopted by the Architectural Committee.

b. Permitted Signs. The following types of signs shall be permitted subject to the requirement for approval in Section 12(a):

i. A sign at the primary entrance to each Lot identifying the name of the business or businesses located thereon, which sign shall have a maximum height of Fifty (50) feet and a maximum area of three (3) square feet. (Per each lineal feet of property frontage along road)

ii. A sign with a company name and the like which is attached to, but not painted upon, a wall of a building on a Lot. Such signs may not extend above the roof line of the building to which attached, and shall not move or flash.

iii. On-premises signs such as signs giving directions to parking areas, entrances, and the like.

iv. Temporary signs offering a property for sale or lease or announcing the construction of future improvements on a Lot.

v. Temporary signs with respect to areas under construction, hazards or special conditions, and the like.

vi. A common sign near the entrance to the Commercial Plaza (being part of the Common Facilities) identifying the names of all of the businesses located at the Commercial Plaza.

13. Maintenance Obligations

a. Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in Section 13(b), it shall be the duty of each Owner, at its sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore its Improvements and Lot in a neat, sanitary, attractive, and lawful condition, and to maintain (including snow removal), repair, replace, and restore all roadways and parking areas on its Lot. In the event that any Owner shall permit any Improvement to fall into disrepair or not to be maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Board shall have the right, but not the duty, upon

thirty (30) days' prior written notice to the Owner of such Lot, to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration.

b. **Maintenance Obligations of Association.** The Association shall maintain, or provide for the maintenance of all of the Common Areas and Common Facilities and all improvements thereon, in good order and repair, and shall likewise provide for the painting and minor repair and replacement as necessary of the commonly metered utilities and any and all utility laterals and buildings. The Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation on the Common Areas or Common Facilities. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in their judgment to be appropriate.

14. **Damage or Destruction to Common Area**

Damage or Destruction to Common Area. Damage to or destruction of all or any portion of the Common Areas or Common Facilities shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

a. In the event of damage or destruction to the Common Areas or Common Facilities, then the Association shall cause such Common Areas or Common Facilities to be repaired and reconstructed substantially as they previously existed.

b. If any insurance proceeds are insufficient to effect total restoration, then the Association shall cause such Common Areas or Common Facilities to be repaired and reconstructed substantially as they previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Capital Improvement Assessment against each of the Owners, in accordance with the provisions of this Declaration.

15. **Insurance**

a. **Common Areas and Common Facilities.** The Association shall maintain fire and extended coverage insurance for no less than one hundred percent (100%) of the maximum insurable value of insurable improvements on the Common Areas and Common Facilities. The insurance coverage shall name as the insured the Association for the benefit of the Owners. Premiums for all insurance carried by the Association are Common Expenses and shall be included in the Common Assessment made by the Association.

b. Fidelity Coverage. The Association may maintain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Members. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

c. Waiver of Subrogation. The Association hereby waives and releases all claims against the Board, the Owners, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

d. Liability Insurance. The Association shall maintain a comprehensive policy of public liability insurance covering all of the Common Areas and Common Facilities. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Coverage shall have limits of liability of not less than \$1,000,000 per occurrence for personal injury and/or property damage.

e. Other Insurance and General. The Association may also maintain Workmen's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Owner and the Association, and the Board, from liability in connection with the Common Areas and Common Facilities, the premiums for which are Common Expenses included in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.

16. Mortgage Protection

Notwithstanding any and all provisions of this Declaration to the contrary (and to the extent the provisions of this Section 16, conflict with other provisions of this Declaration, this Section 16 shall control):

a. Each first Mortgagee of a mortgage encumbering any Lot, at its written request, is entitled to written notification from the Association of any default by the Owner of such Lot in the performance of such Owner's obligations under this Declaration, the Articles, or the Bylaws, which default is not cured within sixty (60) days.

b. Unless one hundred percent (100%) of first Mortgagees and Members holding seventy-five percent (75%) of the voting rights in the Association have given their prior written approval, neither the Association nor the Owners shall:

i. By act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer, directly or indirectly, the Common Areas or the Common Facilities or any of the improvements thereon which are owned by the Association. The granting of easements for public utilities or for other public purposes and the dedication of streets and roadways consistent with the intended use of such property by the Association shall not be deemed a transfer within the meaning of this clause.

ii. Change the method of determining the obligations, assessments, due or other charges which may be levied against an Owner.

iii. Fail to maintain fire and extended coverage on insurable Common Areas or Common Facilities property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the maximum insurable value.

iv. Use hazard insurance proceeds for losses to any Common Areas or Common Facilities for other than the repair, replacement or reconstruction of such Common Areas or Common Facilities property.

v. All first Mortgagees who have requested the same shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association; and (ii) immediate notice following any damage to the Common Areas or Common Facilities whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00).

vi. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Areas or Common Facilities and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property. The first Mortgagees making such payments shall be reimbursed immediately by the Association. The Association shall, upon request of any first Mortgagee, issue an agreement to make reimbursement in full to all first Mortgagees.

vii. Neither this Declaration nor the Articles nor Bylaws will be amended in such a manner that the rights of any Mortgagee will be adversely affected.

viii. Neither Section 15 nor Section 16 can be amended without the consent of all first Mortgagees.

17. General Provisions

a. Enforcement. This Declaration and the Bylaws may be enforced as follows:

i. Breach of any of the covenants contained in this Declaration or the continuation of any such breach may be enjoined by any Owner or by the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

ii. The result of every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors in interest.

iii. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

iv. The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

v. A breach of the covenants, conditions or restrictions contained in this Declaration shall not affect or impair the lien or charge of any bona fide first Mortgage made in good faith and for value on any Lot or the improvements thereon, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise, but shall not be liable for prior breach.

b. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

c. Limited Liability. Neither Declarant, the Association, the Board, the Architectural Committee nor any member, agent or employee of any of the same shall be liable to any party for any action or for failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

d. Duration of Declaration. Any provision, covenant, condition or restriction contained in this Declaration or any Supplemental or Amended Declaration which is subject to the common law rule sometimes referred to as the "rule against perpetuities", shall continue and remain in full force and effect for the period of twenty years or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions, covenants, conditions and restrictions contained in this Declaration or in any Supplemental or Amended Declaration shall continue and remain in full force and effect until January 1, 2049, provided however, that unless at least one year prior to said time of expiration, there is recorded an instrument directing the termination of this Declaration, executed by Owners holding not less than ninety percent (90%) of the votes, said other provisions, covenants, conditions and restrictions shall continue automatically for an additional ten years and thereafter for successive periods of ten years unless, at least one year prior to the expiration of any such extended period of duration, this Declaration is terminated by recorded instrument directing termination signed by Owners holding not less than ninety percent (90%) of the votes.

e. Amendment or Revocation. This Declaration may be amended or repealed by Declarant until such time as all of the Lots have been sold. Thereafter, this Declaration may be amended or repealed by the recording of a written instrument specifying the amendment or the repeal, executed by Owners holding not less than ninety percent (90%) of the votes. No such amendment or repeal shall be effective with respect to the holder or successor or assign of the holder of a Mortgage recorded prior to recording of the instrument specifying the amendment or repeal unless such holder executes the said instrument.

f. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Commercial Plaza or the Property to the public, or for any public use.

g. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in any Lot in the Commercial Plaza does and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction, reservation, and easement contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said Lot.

h. Reservation of Easements.

i. Declarant expressly reserves for the benefit of all the Owners, easements of access, ingress and egress over all Lots, and over

the Common Areas and Common Facilities, for the use and enjoyment of the Lots in accordance with this Declaration, including, the installation and repair of utility services, for drainage over, across and upon adjacent Lots for water from normal use of adjoining Lots, and for maintenance and repair of Common Areas and Common Facilities. Such easements may be used by Declarant, its successors, and the Association for such purposes reasonably necessary for the use and enjoyment of the Lots, the Common Areas and the Common Facilities. No Owner of a Lot shall interfere with the established drainage pattern over its Lot. Declarant further expressly reserves for the benefit of the Association (for a period not to exceed five (5) years after the date hereof), its agents and employees, easements of access, ingress and egress, over the Lots, the Common Areas and Common Facilities, for the purpose of maintaining, repairing and installing water and other utility lines, drainage structures, sewer pipelines and laterals if necessary, in accordance with the provisions of this Declaration, and as otherwise provided by law.

ii. There shall be and Declarant hereby reserves and covenants for itself and all future owners within the Commercial Plaza, easements for county, state and federal public services and for public utilities, including but not limited to, the right of the police to enter for the purpose of enforcing the law.

i. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

j. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Commercial Plaza. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

k. Severability. Invalidity or unenforceability of any provision of this Declaration or of any Supplemental or Amended Declaration in whole or in part shall not affect the validity or enforceability of any other provision or valid and enforceable part of a provision of this Declaration.

i. Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision, restriction, covenant or condition contained in this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

LEUCADIA FINANCIAL CORPORATION,
a Utah corporation

By *Larry W. Pinnock*
Its Vice President (Lawrence W. Pinnock)

Karen Kuipers
Karen Kuipers

David A. Kuipers
David A. Kuipers

A. Krehl Smith
A. Krehl Smith

Curtis B. Scott
Curtis B. Scott

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 8th day of November, 1999, by *Larry W. Pinnock*, the *Vice President* of Leucadia Financial Corporation, a Utah corporation.

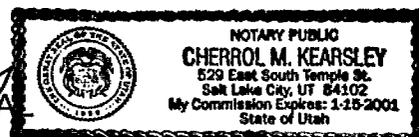
Cherrol M. Kearsley
NOTARY PUBLIC AND SEAL



STATE OF UTAH)
 : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 5th day of November, 1999, by Karen Kuipers and David A. Kuipers.

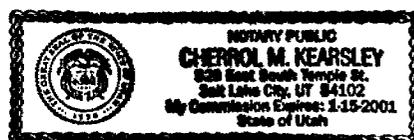
Cherrol M. Kearsley
NOTARY PUBLIC AND SEAL



STATE OF UTAH)
 : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 8th day of November, 1999, by A. Krehl Smith.

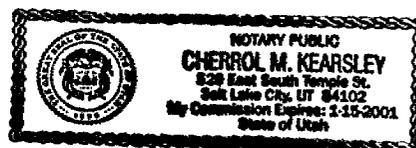
Cherrol M. Kearsley
NOTARY PUBLIC AND SEAL



STATE OF UTAH)
 : ss.
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 8th day of November, 1999, by Curtis B. Scott.

Cherrol M. Kearsley
NOTARY PUBLIC AND SEAL



CONSENT AND SUBORDINATION

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Home Credit Bank, the Trustee named in that certain Deed of Trust dated March 19, 1999, from Karen Kuipers and David A. Kuipers, as trustor, for the benefit of Home Credit Bank, as beneficiary, covering Lot 2, Millpond Plaza - Commercial PUD (which Deed of Trust was recorded March 22, 1999, in Book 559, Page 770, of the Official Records of Tooele County), hereby consents to the foregoing Declaration and agrees that the Deed of Trust shall be junior and subordinate to the same.

DATED this 5th day of November, 1999.

HOME CREDIT BANK
By: [Signature]
Its: Vice President

STATE OF UTAH)
Salt Lake : ss.
COUNTY OF ~~COLE~~)

The foregoing instrument was acknowledged before me this 5th day of November, 1999, by Don C. Ballard, the Vice President of Home Credit Bank, a corporation.

Mary Jane Pickett
NOTARY PUBLIC AND SEAL

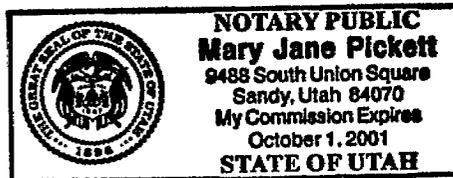


EXHIBIT A

DESCRIPTION OF THE PROPERTY

The following parcel situated in Stansbury Park, Tooele County, Utah:

Beginning at the most Northerly corner of Mill Pond Condominiums as recorded in the Tooele County Recorder's Office, said point also being a point on the Southwesterly right-of-way line of the Stansbury Park Greenbelt and lying South 00°07'45" East 1756.03 feet along the West Section line of Section 15, and East 136.96 feet from the Northwest corner of Section 15, Township 2 South, Range 4 West, Salt Lake Base and Meridian; thence leaving said Greenbelt and running South 44°47'00" West 399.15 feet along said Mill Pond boundary; thence

North 45°13'00" West 25.00 feet along said Mill Pond boundary; thence
South 44°47'00" West 197.89 feet along said Mill Pond boundary to a point on the edge of the Stansbury Mill Pond; thence leaving said Mill Pond Condominiums boundary and traversing along said Stansbury Mill Pond the following seventeen (17) courses:

North 47°40'25" West	2.09 feet; thence
North 30°55'46" West	20.31 feet; thence
North 16°36'34" West	40.11 feet; thence
North 05°19'11" West	26.43 feet; thence
North 07°37'43" West	15.32 feet; thence
North 17°26'14" West	17.67 feet; thence
North 22°05'47" West	16.84 feet; thence
North 33°36'43" West	17.35 feet; thence
North 20°08'48" West	12.95 feet; thence
North 13°57'23" East	16.57 feet; thence
North 49°25'09" West	17.62 feet; thence
North 02°18'57" East	13.81 feet; thence
North 59°30'11" West	29.24 feet; thence
North 78°52'15" West	17.84 feet; thence
North 64°05'03" West	24.62 feet; thence
North 56°48'31" West	17.32 feet; thence
North 69°22'01" West	13.06 feet; thence leaving said Stansbury Mill Pond
North 44°47'00" East	536.55 feet to a point on the Southwesterly right-of-way line of the Stansbury Park Greenbelt; thence
South 44°20'48" East	81.93 feet along said Greenbelt; thence
South 44°45'55" East	223.09 feet to the point of beginning.

Contains 161,067 sf or 3.70 acres more or less.